

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RHONDA BROWN, a Washington resident,

Plaintiffs,

vs.

EARTHBOUND EXPEDITIONS, INC, a
Washington corporation, CLASSICAL 98.1, a
Washington nonprofit corporation, and
BEETHOVEN, A NONPROFIT
CORPORATION, a Washington nonprofit
corporation,

Defendants.

NO.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
AND DAMAGES**

COMES NOW, Plaintiff, Rhonda Brown, by and through her attorneys Washington Civil
& Disability Advocate for her Complaint for Declaratory and Injunctive Relief and Damages to
state and allege as follows:

I. INTRODUCTION

1. Defendants, a travel agency tour operator and a classical radio station in the
Seattle Area, have partnered to offer a unique classical music tour experience to "...join KING
FM host Sean MacLean, and fellow KING FM listeners who share an insatiable passion for great

1 music, food, wine, art and history.”¹ Unfortunately, Defendants do not offer this wonderful
2 opportunity to all classical music fans. Plaintiff, who requires a wheelchair for mobility, is
3 unable to take advantage of that opportunity because Defendants are unwilling to make any
4 reasonable accommodation in their goods and services to permit Plaintiff to participate in any
5 part of the tour.

6 2. The Americans with Disabilities Act and the Washington Law Against
7 Discrimination guarantee the right to an equal opportunity to patronize and participate in the
8 goods and services of places of public accommodation, and require reasonable accommodations
9 be made for people with disabilities. Defendants’ discriminated against Plaintiff by refusing to
10 make reasonable accommodations to allow Plaintiff to participate.

11 II. PARTIES

12 3. Plaintiff Rhonda Brown is a resident of Pierce County, Washington and resides in
13 this district. Ms. Brown cannot walk and requires a wheelchair for mobility

14 4. Defendant Earthbound Expeditions, Inc. (“Earthbound Expeditions”) is a
15 Washington corporation based in this judicial district.

16 5. Defendants Beethoven, A Nonprofit Corporation, and Classical 98.1 (collectively
17 “KING FM”) are Washington nonprofit corporations based in this judicial district.

18 III. JURISDICTION AND VENUE

19 6. This court has jurisdiction pursuant to 28 U.S.C. § 1331, which gives district
20 courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the
21 United States.

22 7. This court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(4), which gives district
23

¹ Details can be found on KING FM and Earthbound Expedition’s websites.

1 courts jurisdiction over actions to secure civil rights under Acts of Congress.

2 8. This court has jurisdiction pursuant to 28 U.S.C. § 1367, which gives district
3 courts supplemental jurisdiction over related state law claims.

4 9. Venue is appropriate in this judicial district under 28 U.S.C. § 1391 because the
5 practices and procedures that gave rise to the Plaintiff's Complaint for Declaratory and
6 Injunctive Relief and Damages occur in this district and the Defendants reside in this district.

7 **IV. FACTUAL ALLEGATIONS**

8 10. Plaintiff Rhonda Brown is a longtime listener of Seattle's Classical KING FM
9 radio station and has been a dedicated donor since the station became listener supported in 2010
10 or 2011. Ms. Brown uses a wheelchair for mobility.

11 11. For the last year or so, Ms. Brown has heard commercials on KING FM radio for
12 KING FM Travel Club's "Classical Cruise on the Rhone River" where tourists will travel
13 through France with "carefully crafted musical performances along the way."

14 12. Particularly of interest to Ms. Brown are the tour-exclusive lectures or programs
15 along the way where KING FM artists and personalities provide commentary, background, and
16 insights regarding the musical performances the tour will experience.

17 13. Ms. Brown went to the KING FM website indicated in the radio commercial, and
18 followed the link to the website for Earthbound Expeditions. Expecting there may be some
19 additional arrangement that would need to be made for wheelchair accommodations she
20 contacted Earthbound Expeditions for more information.

21 14. During Ms. Brown's call with the Earthbound Expeditions representative, she was
22 told there was no wheelchair accessibility on the river boat, and thus she absolutely could not
23 participate.

1 15. Disappointed, but not undeterred, Ms. Brown suggested she could forgo the river
2 boat portion of the trip and instead stay at lodgings on-land at each destination. Ms. Brown was
3 told that this would be too difficult and “a separate tour” would not be set up for her.

4 16. Finally, Ms. Brown suggested that she could simply be sold an itinerary and
5 admission to the on-land concerts and events, and Ms. Brown would secure the travel and
6 lodging herself, thus allowing her to participate in at least some of the tour events and relieving
7 the tour of any additional hassle. Ms. Brown was similarly told this would not be done.

8 17. Ms. Brown then spoke with a manager, who provided a similar response that it
9 would be too much hassle.

10 18. There is a January 15th discounted registration deadline and spaces on the KING
11 FM Travel Club tour are limited.

12 19. Despite federal and state obligations to make services available to people with
13 disabilities, and despite Ms. Brown’s immense offer of flexibility and willingness to cooperate in
14 planning, Defendants failed to make any portion of the KING FM Travel Club tour available to
15 Ms. Brown because of her disability.

16 **V. FIRST CAUSE OF ACTION**
17 **Americans with Disabilities Act**
 42 U.S.C. § 12182

18 20. Plaintiff incorporates by reference all allegations in the paragraphs above.

19 21. The Americans with Disabilities Act (“ADA”) and relevant implementing
20 regulations makes it unlawful to deny people with disabilities the opportunity “to participate in
21 or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an
22 entity.” 42 U.S.C. § 12182(b)(1)(A)(i).

23 22. Ms. Brown is limited in the major life activity of walking and requires a

1 wheelchair for mobility and is thus an individual with a disability under Title III of the ADA.

2 23. Discrimination under the ADA includes “a failure to make reasonable
3 modifications in policies, practices, or procedures when such modifications are necessary to
4 afford such goods, services, facilities, privileges, advantages, or accommodations to individuals
5 with disabilities.” 42 U.S.C. § 12182(b)(2)(A)(ii).

6 24. Defendants organize, plan, advertise, and control the KING FM Travel Club tour,
7 and a travel service is considered a public accommodation under the ADA. 42 U.S.C. §
8 12181(7)(F).

9 25. Defendants discriminated against Ms. Brown by refusing to make any reasonable
10 accommodations or modifications in their services to permit Ms. Brown to participate in any way.

11 26. Defendants’ discriminatory conduct as alleged in this Complaint has harmed Ms.
12 Brown, and the harm will continue without declaratory and injunctive relief.

13 27. Defendants’ discriminatory conduct as alleged in this Complaint entitles Ms.
14 Brown to declaratory and injunctive relief as well as damages. 42 U.S.C. § 12188.

15 28. Defendants’ discriminatory conduct as alleged in this Complaint entitles Ms.
16 Brown to recover reasonable attorneys’ fees and costs incurred in bringing this action. 42 U.S.C.
17 § 12205.

18 **VI. SECOND CAUSE OF ACTION**
19 **Violation of the Washington Law Against Discrimination**
20 **(R.C.W. §§ 49.60.010 et seq.)**

21 29. Plaintiffs incorporate by reference the allegations in the paragraphs above.

22 30. The Washington Law Against Discrimination, and implementing regulations,
23 provides even greater rights and protections for people with disabilities than the ADA. *Taylor v.*
Burlington N. R.R. Holdings, Inc., 193 Wash. 2d 611, 621–22, 444 P.3d 606, 611 (2019) (“the

1 legislature has expressly rejected the idea that the ADA should be used to constrain the
2 protections offered under the WLAD").

3 31. Ms. Brown is an individual with a disability within the meaning of the
4 Washington Law Against Discrimination ("WLAD"). R.C.W. § 49.60.040(7)(a).

5 32. Section 49.60.030(1) of the Revised Code of Washington provides in pertinent
6 part: "The right to be free from discrimination because of . . . the presence of any sensory,
7 mental, or physical disability . . . is recognized as and declared to be a civil right. This right shall
8 include, but not be limited to: . . . (b) The right to the full enjoyment of any of the
9 accommodations, advantages, facilities, or privileges of any place of public resort,
10 accommodation, assemblage, or amusement."

11 33. Under R.C.W. § 49.60.215, "It shall be an unfair practice for any person or the
12 person's agent or employee to commit an act which directly or indirectly results in any
13 distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than
14 the uniform rates charged other persons, or the refusing or withholding from any person the
15 admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place
16 of public resort, accommodation, assemblage, or amusement," based on disability.

17 34. "It is an unfair practice... to fail or refuse to make reasonable accommodation to
18 the known physical, sensory, or mental limitations of a person with a... when same service
19 would prevent the person from fully enjoying the place of public accommodation." W.A.C. §
20 162-26-080.

21 35. Defendants' refusal to make any accommodation to permit Ms. Brown to
22 participate in the KING FM Travel Club tour and Defendants' insistence on providing only the
23 same service (a tour that is wheelchair inaccessible) is a violation of the WLAD and

1 discrimination based on disability.

2 36. As a direct and proximate result of Defendants' discriminatory conduct as alleged
3 in this Complaint for Declaratory and Injunctive Relief and Damages, Ms. Brown has suffered
4 and continues to suffer difficulty, hardship, isolation, and segregation due to Defendants' failure
5 to make reasonable accommodations.

6 37. Pursuant to RCW § 49.60.030(2), Ms. Brown is entitled to declaratory and
7 injunctive relief and damages, and to recover from Defendants her reasonable attorneys' fees and
8 costs incurred in bringing this action.

9 **VII. PRAYER FOR RELIEF**

10 WHEREFORE, Ms. Brown respectfully request that this Court:

11 1. Assume jurisdiction over this action;

12 2. Find and declare Defendants EARTHBOUND EXPEDITIONS, INC.,
13 CLASSICAL 98.1, and BEETHOVEN, A NONPROFIT CORPORATION to be in violation of
14 the Americans with Disabilities Act, 42 U.S.C. §§ 12181 et seq, and the Washington Law
15 Against Discrimination, Wash. Rev. Code §§ 49.60.010 et seq.;

16 3. Issue a permanent injunction ordering Defendants to immediately implement the
17 necessary accommodations, changes, and policies to make the KING FM Travel Club Tour
18 accessible for Plaintiff;

19 4. Award the Ms. Brown reasonable attorneys' fees and costs as authorized by 42
20 U.S.C. § 12205 and R.C.W. § 49.60.030;

21 5. Award punitive, actual, compensatory, and/or statutory damages to Ms. Brown for
22 violations of her civil rights as allowed under state and federal law;

23 6. Award compensatory damages for injury resulting from Defendants'

1 discrimination based on disability at a public accommodation.

2 7. Award such additional or alternative relief as may be just, proper and equitable.

3 DATED THIS 17th day of December, 2019.

4
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